

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

September 27, 2005

DIVISION ONE

Court convened at 9:00 a.m.

Present: Spencer, P.J., Mallano, J., Rothschild, J. and P. Gonzalez, Deputy Clerk.

Each of the following:

B175732	People v. Young
B176731	People v. Gonzalez
B177170	People v. Haney
B177419	People v. Taft
B177621	People v. Garcia
B178647	People v. Rawl
B178943	People v. McGaughy & Booth
B179763	People v. Jones
B179879	People v. Naranjo
B180090	People v. Escobar
B180505	People v. Monge
B180871	DCFS v. Timothy P./Shiela P.
B181002	DCFS v. Jacqueline E.
B180645	People v. Tucker

Argument waived, cause submitted.

B175346 People v. Poe

Oral argument continued to October 25, 2005.

DIVISION ONE (Continued)

B179394 ABCO Leasing, Inc.
 v.
 Mary Olson et al.

Merits:

Argued by Jeanne M. Jorgensen for appellant and by D. Wayne Leech for respondents. Cause submitted.

B181672 Randa Osman
 v.
 Appellate Division of the Superior Court, Los Angeles County
 (The People, r.p.i.)

Merits:

Argued by Kelly C. Quinn for petitioner and by Candice I. Horikawa, Deputy City Attorney for real party in interest. Cause submitted.

B177657 Carl M.Gage
 v.
 Network Appliance Inc.

Merits:

Argued by Gary A. Dordick for appellant and by Lawrence Ramsey for respondent. Cause argued, additional briefing allowed. Both counsel to submit additional briefing within 10 days for each side, cause to be submitted thereafter.

B167342 People
 v.
 Merle O. Green
 Nathaniel Johnson

Merits:

Argued by Richard D. Miggins for appellant Greene and by April S. Rylaarsdam, Deputy Attorney General for respondent. Cause submitted.

September 27, 2005 (Continued)

DIVISION ONE (Continued)

B173617 People
v.
Jose Martinez

Merits:
Argued by Christian R. Juarez for appellant and by Michael A. Katz,
Deputy Attorney General for respondent. Cause submitted.

B176312 Daniel Lutynski
v.
Russell K. Silverling et al.

Merits:
Argued by Helen L. Schwab for appellant and by Ann M. Maurer for respondents. Cause submitted.

Court adjourned.

DIVISION THREE

B177524 People (Not for Publication)
v.
Darieo H.

Parole condition No. 21 is modified to read: "Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places where users (known to you) congregate." Except to the extent of this modification to the condition of probation, the judgment is affirmed.

Kitching, J.

We concur: Klein, P.J.
Croskey, J.

September 27, 2005 (Continued)

DIVISION THREE (Continued)

B172789 People (Not for Publication)
v.
Blackman

The judgment is modified to give defendant credit for 196 days of actual custody and 98 days of good conduct credit, for a total 294 days. As modified the judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect the modification, and to send a copy of the amended abstract to the Department of Corrections.

Kitching, J.

We concur: Croskey, Acting P.J.
 Aldrich, J.

B175716 People (Not for Publication)
v.
Maldonado

The judgment is affirmed.

Aldrich, J.

We concur: Klein, P.J.
Kitching, J.

B168279 Manukyan, et al. (Not for Publication)
v.
Karny, et al.

The judgment is reversed. Each party to bear their own costs.

Aldrich, J.

We concur: Klein, P.J.
Kitching, J.

DIVISION THREE (Continued)

B181942 Los Angeles County, D.C.S. (Not for Publication)
 v.
 Gena M.

The dispositional order denying reunification services is affirmed and the matter is remanded to the dependency court with directions that the court shall direct DCFS to comply with the notice provisions of the ICWA. After proper notice, if Shawmoor is determined to be an Indian child and the ICWA applies to these proceedings, mother is then entitled to petition the dependency court to invalidate orders which violated the ICWA.

Croskey, Acting P.J.

We concur: Kitching, J.
 Aldrich, J.

B181583 Los Angeles County, D.C.S. (Not for Publication)
 v.
 Kathleen H.

The order terminating Mother's parental rights is affirmed.

Croskey, J.

We concur: Klein, P.J.
 Aldrich, J.

DIVISION FOUR

B177364 People (Not for Publication)
 v.
 Ogburn

The judgment is affirmed.

Epstein, P.J.

We concur: Hastings, J.
 Willhite, J.

September 27, 2005 (Continued)

DIVISION FOUR (Continued)

B174231 Flores et al. (Not for Publication)
v.
Williams

The judgment is affirmed. Appellants and respondent are to bear their own costs on appeal.

Epstein, P.J.

We concur: Hastings, J.
Willhite, J.

DIVISION FIVE

B175273 Joe Gonzales et al (Not for Publication)
v.
Whittier Hospital et al.,

The judgments in favor of the defendants are reversed. The order sustaining defendants' demurrers to the elder abuse causes of action without leave to amend is affirmed. Plaintiffs Joe R. Gonzales, Maria Ostler, Margaret T. Gonzales, Alice Moore, and Victor N. Gonzales are to recover their costs on appeal, jointly and severally, from defendants, Whittier Hospital Medical Center, Debra Allen, R.N., Michael B. Nestor, M.D., Advance Care Medical Group, and Gene Tu, M.D.

Turner, P.J.

We concur: Armstrong, J.
 Kriegler, J.

B178260 People
v.
Antwan Jones

Filed order denying petition for rehearing.

DIVISION FIVE (Continued)

B177295 Family Planning Associates (Not for Publication)
 Medical Group, Inc.
 v.
 Inglewood Investments Co.

The judgment is affirmed. The case is remanded to the trial court for determination of attorney fees. Costs on appeal are awarded to respondent.

Mosk, J.

We concur: Turner, P.J.
 Kriegler, J.

DIVISION SIX

B176491 In re Marriage of Oxton (Not for Publication)
 Oxton
 v.
 Malloy

Accordingly, we reverse the post-judgment order and remand this case to the trial court for a redetermination of the community interest in the contingency fee. The trial court may, but is not required to, take further evidence to determine the community interest in the fee according to the hours worked formula. If it finds husband's testimony credible as to the number of hours worked before and after separation, the hours worked formula should be employed. If not, the court should use the time rule. Husband is awarded costs on appeal.

Coffee, J.

We concur: Gilbert, P.J.
 Perren, J.

DIVISION SEVEN

B174727 Los Angeles County, D.C.S. (Not for Publication)
B175743 v.
B179791 Brian B.

The restraining order is reversed in part and affirmed in part in accordance with this opinion. The orders denying Brian's section 388 petition are affirmed in their entirety.

Zelon, J.

We concur: Perluss, P.J.
 Johnson, J.

B179888 Ford
 v.
 KFC Corporation

Filed order denying petition for rehearing.

DIVISION EIGHT

B176461 The Foundation for Taxpayer and (Certified for Publication)
 Consumer Rights, et al.
 v.
 John Garamendi
 Mercury Insurance Group

The judgment is affirmed. Petitioners shall recover their costs and attorney fees on appeal, the amount of which shall be determined upon proper application to the trial court. (Dove Audio, Inc. v. Rosenfeld, Meyer & Susman, supra, 47CA.App.4th at p. 785; Evans v. Unkov (1995) 38 CA.App.4th 1490, 1500.)

Flier, J.

We concur: Cooper, P.J.
 Rubin, J.

DIVISION EIGHT (Continued)

B173987 The Foundation For Taxpayer and (Certified for Publication)
Consumers Rights et al.

v.

John Garamendi et al.,
Mercury Insurance Group et al.,

The judgment is affirmed. Respondents are to recover their costs on appeal.

Flier, J.

We concur: Cooper, P.J.
 Rubin, J.

B175656 Johnson et al., (Not for Publication)

v.

Kissinger

The order denying appellants' motion to vacate the judgment of dismissal is reversed. Appellants are to recover their costs on appeal.

Flier, J.

We concur: Rubin, Acting P.J.
 Boland, J.

B176474 People (Not for Publication)

v.

Ramirez

The judgment is affirmed.

Flier, J.

We concur: Cooper, P.J.
 Boland, J.

September 27, 2005 (Continued)

DIVISION EIGHT (Continued)

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The judgment is affirmed.

Flier, J.

We concur: Rubin, Acting P.J.
Boland, J.